JD-77-18
Denham Springs, LA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NATIONAL RURAL LETTER CARRIERS ASSOCIATION (UNITED STATES POSTAL SERVICE)

and **Case 15–CB–213552**

AMANDA WILLIAMS, an INDIVIDUAL

Kevin McClue and *Alexandra K. R. Schule, Esqs.,*
for the General Counsel.
Jean-Marc Favreau and *Mark Gisler, Esqs.,*
(Peer, Gan & Gisler LLP), for the Respondent.
Mark F. Wilson, Esq., for the United States Postal Service.

DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. This matter is before me on a complaint and notice of hearing (the complaint) issued on June 25, 2018, arising from unfair labor practice charges that Amanda Williams (Williams) filed against Rural Letter Carriers Association (the Respondent or the Union) relating to the Denham Springs, Louisiana facility of the United States Postal Service (the Employer or USPS).

Pursuant to notice, I conducted a trial in New Orleans, Louisiana, on October 9 and 10, 2018, during which the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

Issue

Did the Respondent violate Section 8(b)(1)(A) of the Act by arbitrarily settling at the second step of the grievance procedure the grievances of Williams and Yiesha Porter[1] over the failure of USPS to follow seniority in awarding them routes, which settlement

[1] Hereinafter referred to as "Porter," as opposed to Angela Porter, to whom I will refer as "A. Porter."

provided them with a prospective but not retroactive remedy and which did not protect Porter from receiving demand letters from the Employer for repayment of certain benefits?

The General Counsel does not contend that the Union's conduct was discriminatory, invidious, perfunctory, or taken in bad faith. See GC Br. at 1–2, 31 et. seq. Nor has the General Counsel continued to pursue the complaint allegation that the Respondent acted arbitrarily in not taking the grievances to arbitration. Accordingly, I will not consider those theories as bases for finding potential violations.

Witnesses and Credibility

The General Counsel called Williams and Porter. The Respondent called the following union representatives: Joey Johnson, director of labor relations; Deborah Williams, regional representative; Toni Cannon, district representative; and Tameka Brown, area steward.

The underlying facts are generally undisputed, and the testimony of the various witnesses did not present any major conflicts that affect my decision. Thus, credibility resolution is not a pivotal factor in this case.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, written and oral stipulations, and the thoughtful posttrial briefs that the General Counsel, the Respondent, and USPS filed, I find the following.[2] The parties' willingness to enter into many stipulations, both factual and documentary, greatly streamlined the presentation of evidence (see Jt. Exhs. 1–11).

The Employer provides postal services for the United States and operates various facilities throughout the United States, including its facility in Denham Springs, Louisiana (the facility). The Board has jurisdiction over the Respondent and this matter pursuant to Section 1209 of the Postal Reorganization Act. At all times material, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

The Union, one of five major unions representing postal employees, represents about 130,000 rural carriers nationwide. At all material times, the Union and USPS have been parties to a collective-bargaining agreement (national agreement) (Jt. Exh. 1) covering a unit that includes all three categories of rural letter carriers: (1) regular rural letter carriers (regular carriers), full-time employees who serve an assigned rural mail route; (2) part-time flexible rural carriers (PTFs), career leave replacement carriers who provide service on regular and

[2] On the record, I granted the USPS motion to intervene for the limited purpose of filing a posthearing brief. See ALJ Exh. 1. On October 23, 2018, I granted the General Counsel's motion to correct the record, to which the Charging Party and the Respondent joined, to reflect that Joint Exhibit 4 was introduced and admitted into evidence.

auxiliary routes as directed by management; and (3) rural carrier associates (RCAs), part-time employees who deliver mail to various rural routes, typically when the regular carrier assigned to a route is off duty. As opposed to the first two categories, they are considered noncareer.

Regular carriers work an assigned route each workday with set days off and are not required to work additional days unless they are on the relief day work list. RCAs and PTFs generally have a primary route assignment that they cover on regular carriers' days off or when they take leave. RCAs may have secondary and tertiary route assignments that they work in the absence of the primary RCA and in accordance with the facility's requirements. RCAs' days off can change from week to week, and they can be required to work up to 12 hours per day. Regular carriers receive an annual salary that is determined by an annual evaluation of the route to which they are assigned, not their actual hours worked, and they receive periodic step and cost of living increases. RCAs and PTFs also get paid based upon the route evaluation for the days they work, but they receive overtime for actual work hours over 40 hours.

Although both regular carriers and RCAs are eligible for health, vision, dental, and life insurance, RCAs receive less benefits than those offered to regular carriers (see GC Exh. 11). Regular carriers receive retirement benefits, including a pension and a thrift savings plan (TSP); PTFs are career employees who have deductions under the Federal Insurance Contributions Act, earn step increases, and leave. On the other hand, RCAs do not receive retirement benefits, cost of living increases, or step increases.

Article 12.3 of the national agreement governs posting of, bidding on, and awarding vacant routes. When a full-time regular route becomes available, the route is posted at the local post office and associated stations and branches for 10 days during which time regular carriers and RCAs can bid on the route. The posting must include information on all regular (full-time) routes in the office and inform the potential bidders that "the bidding is not only for the existing regular route vacancy, but also for eligible rural carriers to bid on any regular route(s) in the office that may become available as a result of filling the vacant route on the original posting." (Jt. Exh. 1 at 61). Regular carriers have bidding preference over RCAs and, within each job classification (i.e., regular carriers and RCAs), route assignments are awarded based on seniority at the particular facility. Regular carriers also have bidding preference over PTFs, but PTFs must be awarded a vacancy prior to an RCA. When an open bidding period closes, the Employer awards the vacant route and any residual vacancies (i.e., routes that become available after another route is assigned) to the most senior eligible employee who bid on the route. If a carrier bids on multiple routes, he or she can designate an order of preference.

Memorandum of Understanding 7 in the national agreement (Jt. Exh. 1 at 145–146) provides in relevant part that a carrier who is unable to perform the duties of a bid-for-position can bid for an open position if he or she will be able to perform its duties in 6 months from the time the bid is awarded. In that event, the position will be held in abeyance. Prior to the award, the employee must have on file or must provide medical certification indicating

that he or she will be able to full perform the duties of the position within that required period, or the position will be awarded to the next senior bidder.

Pursuant to article 12 of the national agreement (Jt. Exh. 1 at 53 et. seq., 145–147), the Employer maintains the employee seniority lists, is responsible for notifying carriers of route vacancies, and conducts the bidding and route award process. The bidding process is electronic and will automatically fill in the vacant routes with the next eligible individual. The Union and individual carriers have the right to grieve violations of the agreement that the Employer commits during the bidding and/or award process.

The grievance and arbitration procedure is set forth in article 15 (Jt. Exh. 1 at 76 et. seq.). Section 1 provides, as part of the general policy, that (1) grievances be "processed and adjudicated based on the principle of resolving such grievances at the lowest possible level in an expeditious manner . . .;" and (2) that "[t]he parties . . . agree that at any step in the grievance procedure, the Union representative shall have full authority to settle or withdraw the grievance in whole or in part." (Jt. Exh. 1 at 76; see also Jt. Exh. 1 at 83). The grievance procedure provides for four steps and then arbitration. At each step, a higher-level representative of USPS and the Union is involved. At all times relevant, the following individuals served as the union representative: step 1 – Tameka Brown, local steward; step 2 – Toni Canon, district representative for the State of Louisiana; and step 3 – Deborah Williams, regional representative for the Employer's Southern District (Representative Williams). When a grievance goes to the next step, both parties are responsible for insuring that all facts, issues, and documentation are provided to the appropriate officials.

The facility is the largest rural postal facility in Louisiana, having approximately 36–40 routes. As of March 14, 2017,[3] on the facility's RCA roster, Myaika Gross had a seniority date of May 5, 2012; Williams a seniority date of March 24, 2014, A. Porter the same seniority date as Williams, and Porter a seniority date of October 3, 2015 (R. Exh. 5 at 3–4).

On March 11, the Employer posted four route vacancies: 2, 14, 26, and 28, with bidding to close on March 20 (GC Exh. 9). Regular carrier Parviz Scott bid on and was awarded Route 2. Because he was awarded Route 2, his former route, Route 33, became available for bidding. Regular carrier Cindy McLin bid on and was awarded Route 14. Because McLin was awarded Route 14, her former route, Route 13 became a residual route. Both RCAs Williams and Porter bid on all posted routes and on nonposted routes (see GC Exh. 10) in case they became vacant as a result of the bidding process. Williams specified Routes 26 and 28 as her top two picks; Porter did not specify any preferences because she was low on the seniority list.

During this open bidding process, RCA Gross was off from work on an on-the-job injury. At some point, she left on her supervisor's desk the required limited duty worksheet, along with a doctor's note that stated she could return to full duty on March 31 (R. Exh. 3 at

[3] All dates hereinafter occurred in 2017 unless otherwise indicated.

28–29). However, management misplaced the doctor's note and did not locate it prior to the awarding of the bids. As result, Gross' bids were rejected because she was found ineligible.

General Counsel's Exhibit. 4 is the preaward bid list for the March 11 posting, which shows what various carriers would have been awarded if they met all qualifications necessary to perform the route, including medical clearance if the carrier was on medical restriction. General Counsel's Exhibit 8 is the "complete bid list" for the posting

When this bidding period closed on March 20, Route 13 was held in abeyance for regular carrier Christina Beach, Route 26 was awarded to RCA Williams (her first choice), Route 28 was awarded to RCA A. Porter, and Route 33 was assigned to RCA Porter. The above-specified route assignments went into effect on April 15. As a result, RCAs Williams, A. Porter, and Porter became regular carriers, but Gross remained an RCA.

On March 31, in response to the Employer's refusal to accept her March bids, Gross filed a grievance (Jt. Exh. 2 at 7), contending that she had submitted the proper paperwork and should have been awarded a route. The Union took the position that there was no requirement in the contract that Gross have hand-delivered the documentation to her supervisor, as the Employer initially contended.

On May 6, the Employer posted a route vacancy for Route 20, on which Porter bid and was awarded. Her former route (Route 33) then became available and was bid on and awarded to Gross. As a result, Gross became a regular carrier effective June 10. Williams did not bid during this posting period and remained on Route 26.

Another route posting occurred on July 29. As a result of this posting, rural carrier Kayla Talbert, whose termination from USPS was being challenged through the grievance process, was holding route 38 in abeyance. This posting was not finalized prior to the settlement of Gross' grievance.

On September 18, the Employer and the Union settled Gross' grievance at step 3 (Jt. Exh. 2 at 8).[4] In determining how the grievance would be settled and effectuated, Representative Williams and Sharon Favors, the Employer's area labor relations specialist, had requested a copy of the seniority list kept by the Employer's officials at the facility. However, the facility had no such list, and they subsequently obtained a purported seniority list from the Employer's postal service operations in Shreveport, Louisiana (Jt. Exh. 3). According to Steward Brown, this was actually a schedule rather than a seniority list, but relying on the schedule for seniority purposes had not been an issue in the past.

This list that the Employer and the Union used to craft and effectuate Gross' settlement listed employees by their hire date, not by seniority, and showed A. Porter ahead of Williams. That was incorrect because, although the two had the same enter-on-duty date,

[4] The General Counsel does not contend that the Union engaged in any malfeasance in the way it processed or settled Gross' grievance.

Williams in fact had a higher seniority ranking based on her having a higher score on the USPS entrance examination. Representative Williams, who settled the Gross grievance, testified that the Union had no reason at the time to question the accuracy of the list that the Employer had provided.

Respondent's Exhibit 3 is the Union's file for the Gross grievance, which includes both the USPS–union joint file and the Respondent's internal documents. It contains (at 34) a relief carrier schedule for the week of February 4 showing Williams ahead of A. Porter. It is crossed out by a large "X" and has various handwritten changes. It is not clear if and how this document was considered during settlement discussions between the Employer and the Union; Brown could not recall seeing the document, testifying that Gross' grievance was not based on seniority.

Pursuant to Gross' settlement, retroactive to April 15, Williams was moved to Route 33, a route that she previously had and did not like; Talbert was awarded Route 26, which was held in abeyance due to the pending termination grievance; and Porter's conversion to a regular carrier on Route 33 was cancelled and she was returned to her RCA position. This settlement further provided that, for the period of April 15 to June 9, Gross was retroactively assigned Route 26 and, starting June 10, to Route 20.[5]

On September 21, District Representative Cannon informed Williams and Porter of their reassignments as a result of the settlement. During their conversation, both Williams and Porter expressed displeasure, Williams at her reassignment and Porter at her demotion. Williams pointed out that she was senior to A. Porter, but Cannon replied that the terms of the settlement agreement would not be changed, and A. Porter would remain on Route 28.

The following day, Williams, Porter, and A. Porter participated in an informal first-step discussion with Postmaster Loquita Vallery, 204B Acting Supervisor Dana Lewis, and Brown. Williams again said that the incorrect seniority list was used in settling the Gross grievance. Vallery stated that she agreed with Williams but that she had to follow the grievance settlement. Brown also stated that she understood Williams' position but that Cannon would handle the grievances if they went to the next step. The grievances were not settled, and Williams called Cannon after the call. She repeated her complaint that the wrong seniority list was used in settling the Gross grievance. Cannon responded that the settlement was final. Williams stated that she wished to file a grievance, and Cannon replied that she could. Williams asked who Cannon's supervisor was, and Cannon replied (Committeeman) Shirley Baffa. Baffa called Williams about a week later. After Williams explained the situation, Baffa stated that she would get back to her, but they had no further communications.

The same day, Williams and Porter filed written grievances regarding their route reassignments as per the Gross settlement (Jt. Exhs. 4 and 5). A. Porter, who was not reassigned, also filed a grievance, dated September 23, over the use of an inaccurate seniority list (Jt. Exh. 6).

[5] USPS implemented the terms of the agreement on December 8. See R. Exh. 9 at 25.

While the Union was processing those three grievances, officials at the facility furnished the Union with an accurate seniority list (undated "Seniority Report") (Jt. Exh. 7). The Employer provided no explanation to the Union for why it did not earlier provide an accurate list.

Union representatives at various levels were involved at different points, over many months, in discussing between themselves and with management the substance of the grievances and in attempting to fashion an appropriate remedy (see R. Exhs. 1, 3–7, and 9, encompassing the official USPS–union grievance files and the Union's internal files, including internal written communications). In an email of January 3, 2018 (R. Exh. 1 at 5) to Joey Johnson, the Union's national director of labor relations, Representative Williams accused local management of "playing games" and "still protecting" "very junior" Porter and Williams, who was working as a 204B supervisor.

Steward Brown handled the grievances at the first step. To verify the grievants' claim that the seniority list used in the Gross settlement was inaccurate, she worked with 204B Supervisor Elisa Hamilton to construct an accurate seniority list, which was completed in November (R. Exh. 4 at 3–4, 11–12). Because they were unable to reach agreement on a remedy, the Employer denied the grievances, which went to the second step on November 28 (see R. Exh. 4, step 2 documents) and were handled by Cannon. Thereafter, Baffa, Brown, Cannon, and Williams had a series of email communications in which they discussed at length the matter of remedy (R. Exh. 7 at 159 et seq.). Cannon also worked with the Employer in trying to correct deficiencies in the seniority list at the facility. Representative Williams discussed with Cathy Perron of USPS contract administration and Johnson how to resolve the grievances. She eventually drafted language on remedy and, after consulting with Johnson (R. Exh. 9 at 10–11), presented it to the Employer.

On March 23, 2018, the Union and the Employer agreed to settle all three grievances at step 2 (Jt. Exhs. 4, 8, and 9). The Union did not discuss the terms of the settlements with Williams, Porter, or A. Porter before agreeing to them.

The settlements provided that local management promptly post an attached (accurate) seniority list on the bulletin board and provide the Union with any changes, that routes 26 and 38 be promptly posted, and that management subsequently post the two PTF positions that were being vacated by the two senior PTFs being awarded regular routes. As opposed to the settlement of the Gross grievance, neither Williams nor Porter were awarded a retroactive remedy.

Representative Williams has held union positions entailing responsibility for handling grievances for 32 years. She testified that the Union wanted to settle the grievance in the best way possible with the least impact on the least number of employees, and that the settlement was designed to enable Williams to bid on and get Route 26 and to enable Porter to immediately obtain career status by becoming a PTF. In this regard, nothing in the national

agreement requires the Employer to immediately post PTF positions vacated by PTFs who are promoted to regular status or who resign; rather, that is left to the Employer's discretion.[6] The Employer did create two new PTF positions effective on June 23, 2018, one of which was awarded to Porter, who shortly before the trial became a regular carrier.

According to Johnson, when resolving route grievances, the Union must consider how many different employees will be impacted by undoing what was done; the more routes, the more complex. He further testified that making Williams' and Porter's remedies retroactive would likely have resulted in other employees filing grievances over their route changes because changing one route affects other route assignments, creating a "snowball" or "domino" effect.[7]

In April 2018, Talbert was removed as an employee, and the routes that had been held in abeyance were posted. Thereafter, Williams bid on, and was awarded, Route 26. Because Williams has been a 204B acting supervisor since November 2017, she has not yet carried that route apart from one occasion for over a week when she briefly stepped down as an acting supervisor.

Both Williams and Porter were adversely affected financially by their reassignments pursuant to the terms of the Gross settlement, beyond Williams' route reassignment and Porter's demotion back to RCA. Regarding the Gross settlement, the Employer, in a letter of September 18, advised the affected carriers and the Union that debts might incur relative to the cancellation and/or conversion of routes (retroactive to April 15) and that in the event of debts, management would take appropriate administrative action to pursue and collect them (R. Exh. 3 at 2).

In an email of December 8, the Employer specifically stated that "Ms. Porter will receive a letter of demand from payroll" (R. Exh. 9 at 25), and it subsequently issued Porter two such demand letters: one dated December 27, in the amount of $2,770.80 for health benefit moneys (GC Exh. 11); the other dated June 1, 2018, in the amount of $3,146.11 for TSP and retirement benefits (CG Exh. 12). Employees can grieve repayment demands, and Porter filed a grievance over the latter, which is pending. The Employer is supposed to hold a repayment demand in abeyance until a grievance over it is resolved. As the General Counsel points out (GC Br. at 16), none of the Union's settlement offers to the Employer required USPS to forego the collection of any wages or benefits that it paid on Porter's behalf; Representative Williams did, however, tell Favors of USPS labor relations that a letter of demand would be inappropriate under the circumstances.

As to Williams, due to the Employer's delays in processing paperwork, her hours for the pay period October 28–November 10 were recorded as 40 hours of leave without pay (GC Exh. 5). As a result, some of her checks bounced because they were on autopay from her paycheck, and she had to pay overdraft fees levied by her bank. The Employer later partially,

[6] USPS supports this conclusion (USPS Br. at 5).

[7] USPS supports this analysis (USPS Br. at 6).

but not fully, compensated her for the hours that she actually worked during that period. She also lost a day of annual leave because she was charged with leave without pay.

General Counsel's Position

The General Counsel contends that the Union acted arbitrarily in settling Williams' and Porter's grievances at the second step of the grievance procedure without requiring the Employer to retroactively apply the correct seniority list in their favor and without protecting Porter from being subject to repayment demand letters.

Applicable Law

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative, to fairly represent all employees in the bargaining unit and to refrain from any action against an employee based upon considerations or classifications that are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); see also *Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017).

The Supreme Court has long held that a union is afforded wide latitude in carrying out its representational duties. See *United Steelworkers of America, AFL-CIO-CLC v. Rawson*, 495 U.S. 362, 374 (1990), citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); *Vaca v. Sipes*, above at 191; see also *Operating Engineers Local 181*, above. As the Court stated in *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 78 (1991), regarding a union's negotiated strike settlement, an examination of a union's performance "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities."

To be found arbitrary, the union's behavior must have been "so far outside a 'wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary.'" *Airline Pilots Assn.*, above at 66, citing *Ford Motor Co.*, above at 338; see also *Amalgamated Transit Union Local 1498 (Jefferson Partners L.P.)*, 360 NLRB 777, 778 (2014).

Thus, a union enjoys a wide range of discretion in determining whether and how to handle employee grievances, provided the exercise of such discretion is not based on discriminatory, arbitrary, or bad-faith considerations. *Office Employees Local 2*, 268 NLRB 1353, 1355 (1984), affd. sub nom. *Eichelberger v. NLRB*, 765 F.2d 851 (9th Cir. 1985), citing *Teamsters Local 692 (Great Western)*, 209 NLRB 446 (1974); see also *Turner v. Air Transport Dispatchers' Assn.*, 468 F.2d 297, 299 (5th Cir. 1972).

Something more than mere negligence, poor judgment, or ineptitude in grievance handling is needed to establish a breach of the duty of fair representation. *Amalgamated Transit Union*, above; *Plumbers Local 342 (Contra Costa Electric)(Contra Costa II)*, 336 NLRB 549, 550 et. seq. (2001), petition for review denied sub nom. *Jacoby v. NLRB*, 325

F.3d 301 (D.C. Cir. 2003); *Office Employees Local 2*, above at 1355; *Service Employees, Local 579 (Beverly Manor Convalescent Center)*, 229 NLRB 692 (1977).

The above principles apply to grievance settlements involving multiple individuals, some of whom are dissatisfied with the outcome. See *Letter Carriers Branch 1227 (Postal Service)*, 347 NLRB 289, 289 (2006); *Letter Carriers Branch 6070 (Postal Service)*, 316 NLRB 235 (1995).

Analysis and Conclusions

I conclude that the Union's conduct, in settling the grievances at the second step, without providing for a retroactive remedy and without protecting Porter from demand letters, was not arbitrary. Rather, various union representatives, including national Director of Labor Relations Johnson, spent considerable time between themselves and with management, over a period of months, trying to fashion an appropriate remedy that would effectively balance the interests of the grievants in getting their proper seniority and desired routes, and the interests of other carriers in not having their routes disrupted. In these circumstances, I cannot find that its second-step grievance settlements were so far outside the range of reasonableness as to have been irrational.

The General Counsel points out (GC Br. at 18, 28) that the Union settled the Gross grievance with a retroactive remedy. However, this does not in and of itself show that it acted arbitrarily in not seeking the same for Williams and Porter since the situations were not identical. The Gross grievance resulted from what was a clear error on the Employer's part that was easily detected; these grievances required considerable investigation due to the Employer's failure to maintain a readily accessible seniority list. Retroactivity for Gross affected only Williams and Porter; retroactivity for them could have adversely affected a greater number of other carriers and likely resulted in additional grievances. The General Counsel argues (GC Br. at 32 et. seq.) that the Union did not prove that there would have been such a "snowball" effect. However, as the USPS brief at 6 points out, the retroactive remedy provided to Gross resulted in Williams and Porter being bumped from their routes, and there is no reason to believe that their getting a retroactive remedy would not have had a similar impact on other carriers. In any event, the Union was not legally obliged to insist on a retroactive remedy in either situation.

The same holds true of the Union's failure to insulate Porter from being subjected to demand letters from the Employer. I note that Porter had a right to grieve any demands for repayment, thereby staying her obligation to repay. Thus, she was not left without a remedy, and the Union is currently processing a grievance to waive any such money owed. As to pay issues that Williams experienced in late 2017, the Union correctly points out (CP Br. at 29 fn. 9) that these were unconnected to the way the Respondent handled her grievance; rather, they stemmed from problems with the Employer's paperwork processing.

The General Counsel argues (GC Br. at 35) that the Union did not want to make Williams and Porter whole based on Representative Williams' reference in her January 3, 2018 email to Porter as "very junior" and Williams as an acting supervisor, and that these

were arbitrary considerations. I fail to see such a nexus, noting that the General Counsel has not contended that the Union discriminated against them because of those statuses. Moreover, I do not agree with the General Counsel (GC Br. at 5) that Representative Williams' comment in that email about management protecting Williams and Porter infers that the Employer offered or discussed returning them to their original positions. On the contrary, nothing in the Respondent's grievance files indicates that the Employer proposed or was willing to entertain such a remedy.

The General Counsel further argues (GC Br. at 4) that the inclusion in the Union's Gross grievance file of a correct seniority list (R. Exh. 3 at 30) demonstrates that the Union knew or should have known that the list used to settle the Gross grievance was incorrect. However, that was a schedule list rather than an official seniority list, Gross' grievance did not involve an issue regarding her seniority, and how it got into the grievance file is unknown. In any event, this shows negligence at most, considering the confusion regarding the issue of Williams' seniority vis-à-vis A. Porter and the surprising difficulty that the Employer and the Union had in ascertaining accurate seniority. As the Fifth Circuit Court of Appeals aptly stated in *Landry v. The Cooper/T. Smith Stevedoring Co.,* 880 F.2d, 846, 854 (5th Cir. 1989), "[T]he duty of fair representation does not reach all less than perfect behavior." The Employer's inability to have had such information readily available seems unusual in today's age of computerized records, but that was not the Union's responsibility, and nothing in the record suggests that either the Employer or the Union engaged in bad faith in processing the grievances.

The General Counsel also contends (GC Br. at 30) that due to the foreseeable detrimental effects that Williams and Porter suffered, the Union's failure to communicate with them amounted to more than mere negligence. However, the failure of a union to maintain reasonable contact with employees, including a failure to respond to phone messages and to keep employees properly informed of its address or meetings does not equate to arbitrary, invidious, or perfunctory action. *Diversified Contract Services*, 292 NLRB 603, 606 (1989); *Rainey Security Agency*, 274 NLRB 269, 270 (1985). The General Counsel cites (GC Br.at 30) *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995 (1986), but that case is distinguishable. There, the Board (at 997) found that the union's abandonment of a grievance, without providing any explanation to the grievant or any evidence of the exercise of discretion in abandoning the grievance amounted to a willful failure to pursue the grievance and was therefore perfunctory (not arbitrary). The Board emphasized that the union had earlier "specifically committed itself to process the grievance to arbitration." (ibid).

No doubt, use of the wrong seniority list in settling the Gross grievance worked to the detriment of Williams and Porter, who were understandably upset. However, the party bearing primary responsibility for any losses they suffered was the Employer, which first failed to honor Gross' route bid because it could not locate all of the medication documentation that Gross had submitted, and then provided the Union with a faulty seniority list in resolving her grievance. The Union was not required in representing Williams and Porter in their grievances to make them whole for any and all financial and other adverse consequences that they suffered as a result.

I therefore conclude that the Union did not violate Section 8(b)(1)(A) by breaching its duty of fair representation to Williams and Porter by settling their grievances under the terms that it did.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent and this matter pursuant to Section 1209 of the Postal Reorganization Act.

2. At all times material, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in any violations of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The complaint is dismissed.

Dated, Washington, D.C., November 30, 2018.

Ira Sandron
Administrative Law Judge

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.